



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 1, 2004

Ms. Charlotte L. Staples
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2004-2621

Dear Ms. Staples:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 198669.

The City of Haltom City (the "city"), which you represent, received a request for all e-mails sent by a particular city council member relating to city business during a certain period of time. You claim that portions of the requested information are excepted from disclosure under sections 552.027 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we will address your contention that the city is not required to disclose addresses and telephone numbers of members of the public that are contained in the requested information pursuant to section 552.027 of the Government Code. Section 552.027 provides:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

- (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by a governmental body, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Therefore, section 552.027 provides exemptions from the definition of "public information" under section 552.002 for commercially available research material. You assert that the addresses and telephone numbers at issue are "available through examination of the public phone book. As this information is already produced in a commercially available form to the public, the city is not obliged to provide it under the Act." We disagree. While the city does not have to provide copies of a telephone book to a requestor, section 552.027 is not applicable to information or records that may also appear in a similar form in a telephone book. Thus, the information at issue must be released to the requestor.

We next address your claim under section 552.137 of the Government Code, which provides as follows:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

- (c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. We find that most of the e-mail addresses you have marked are excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to release has been granted, the city must withhold these e-mail addresses pursuant to section 552.137(a) of the Government Code. However, we have marked two e-mail addresses that fall within the scope of section 552.137(c); these e-mail addresses cannot be withheld under section 552.137, and must be released.

In summary, unless consent to release has been granted, the city must withhold most of the e-mail addresses that you have marked pursuant to section 552.137(a). The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 198669
Enc. Submitted documents

c: Mr. David Lieber
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(w/o enclosures)